Tang Peng Huat & Anor v Tan Boon Chong & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J-02–2401–09 OF 2011
ABDUL WAHAB PATAIL, AZIAH ALI AND LIM YEE LAN JJCA
13 JANUARY 2015

Land Law — Assignment — Deed of assignment — Holder of undivided half share in land absolutely assigned her share to purchasers on full payment of purchase price — Whether trial court wrong to hold deed of assignment null and void for breach of s 214(1)(a) and (b) of the National Land Code — Whether what was assigned was whole, and not part, of undivided half share in the land — Whether purchasers became beneficial owners of share upon full payment of purchase price and seller of share became bare trustee for buyers

Two persons, Low Lin Aik (LLA) and Tan Moi Hong (TMH), bought a portion of a larger piece of land ('Lot 380') and each of them held a half undivided share in the portion ('the portion'). By a deed of assignment ('DOA'), LLA sold her half undivided share to the appellants jointly in equal shares at a price of RM16,000 which was paid in full. By another DOA, both LLA and TMH sold their respective undivided shares in the portion to the respondents for RM15,000. Lot 380 subsequently underwent subdivision and the portion became two pieces of land, PTD 17330 and PTD 17331, both of which came to be registered in the names of the respondents. This was despite the appellants having paid their share of fees and charges for the survey, preparation and layout plan for the subdivision and for quit rent and premium in respect of PTD 17330. When the respondents refused the appellants' request to transfer PTD 17330 to them, the latter filed suit in the High Court for an order that they do so. The High Court dismissed the appellants' claim holding that the DOA in their favour was null and void and ineffective in passing title because LLA had sold not the whole, but only a part, of her half undivided share in the portion and this contravened s 214(1)(a) and (b) of the National Land Code ('the NLC'). The court further held that because of that illegality, the payment by the appellants of quit rent and other charges and fees in respect of PTD 17330 was of no significance. The instant appeal was against the decision of the High Court.

Held, allowing the appeal with costs of RM20,000:

(1) The DOA showed that LLA had assigned the whole, and not part, of her half undivided share to the appellants. Hence, the DOA was valid and it had not contravened s 214 of the NLC (see para 25).

(2) Upon acknowledgement of receipt of full payment by LLA and the surrender of all her rights, interest, benefits and occupancy of the whole of her undivided share in the portion, which after sub-division became PTD 17330, the appellants became beneficial owners of LLA's half undivided share and LLA became a bare trustee for the appellants. Although PTD 17330 was registered in the names of the respondents, they conceded in their testimonies that that land did not belong to them; that they had only bought PTD 17331 and that PTD17330 belonged to LLA. Considering the evidence and coupled with the respondents' confession, the appeal was allowed (see paras 26–28).

[Bahasa Malaysia summary

Dua orang, Low Lin Aik (LLA) dan Tan Moi Hong (TMH), membeli sebahagian daripada bahagian besar tanah ('Lot 380') dan setiap mereka memegang sebahagian syer dalam bahagian tersebut ('bahagian tersebut'). Melalui surat ikatan penyerahhakan ('SIP'), LLA menjual sebahagian syer yang tidak dibahagikan kepada perayu-perayu bersama-sama dalam syer yang sama pada harga sebanyak RM16,000 yang mana dibayar sepenuhnya. Dengan SIP satu lagi, kedua-dua LLA dan TMH menjual syer mereka masing-masing tidak dibahagikan dalam bahagian tersebut kepda responden-responden untuk sebanyak RM15,000. Lot 380 kemudiannya melalui subbahagian dan bahagian tersebut menjadi dua lot tanah, PTD 17330 dan PTD 17331, yang mana kedua-duanya didaftarkan dalam nama-nama responden-responden. Ini berlaku meskipun perayu-perayu membayar syer fi mereka dan caj-caj untuk ukur, penyediaan dan pelan susun atur untuk subbahagian dan untuk cukai tanah dan premium berkaitan PTD 17330. Apabila responden menolak permohonan perayu-perayu untuk memindahkan PTD 17330 kepada mereka, perayu-perayu memfailkan tindakan di Mahkamah Tinggi untuk perintah mereka berbuat sedemikian. Mahkamah Tinggi menolak tuntutan perayu-perayu memutuskan bahawa SIP yang berpihak mereka adalah tak sah dan batal dan tidak berkesan dalam memindahkan hak milik kerana LLA bukan menjual kesemua, tetapi hanya sebahagian, syer dia yang tidak dibahagian dalam bahagian tersebut dan ini melanggar s 214(1)(a) dan (b) Kanun Tanah Negara ('KTN'). Mahkamah selanjutnya memutuskan bahawa oleh kerana ketaksahan tersebut, bayaran oleh perayu-perayu terhadap cukai tanah dan caj-caj yang lain berkaitan PTD 17330 tidak bermakna. Rayuan ini adalah terhadap keputusan Mahkamah Tinggi.

Diputuskan, membenarkan rayuan dengan kos sebanyak RM20,000:

(1) SIP menunjukkan bahawa LLA telah menyerahhakan kesemua, dan bukan sebahagian, syernya yang tidak dibahagikan kepada perayu-perayu. Maka, SIP adalah sah dan tidak melanggar s 214 KTN (lihat perenggan 25).

(2) Atas pengakuan penerimaan oleh LLA dan penyerahan kesemua haknya,

faedah dan milikan terhadap kesemua syernya yang tidak dibahagikan dalam bahagian tersebut, yang mana selepas subbahagian menjadi PTD 17330, perayu-perayu menjadi pemilik benefisial syer LLA yang tidak dibahagikan dan LLA menjadi pemegang amanah untuk perayu-perayu. Walaupun PTD 17330 didaftarkan dalam nama-nama responden, mereka mengaku di dalam keterangan mereka bahawa tanah tersebut bukan milik mereka; bahawa mereka hanya membeli PTD 17331 dan bahawa PTD17330 dimiliki oleh LLA. Mempertimbangkan keterangan bersama-sama dengan pengakuan responden-responden, rayuan dibenarkan (lihat perenggan 26–28)]]

Notes

For a case on deed of assignment, see 8(1) *Mallal's Digest* (4th Ed, 2013 Reissue) para 2552.

Cases referred to

Temenggong Securities Ltd & Anor v Registrar of Titles, Johore & Ors [1974] 2 MLJ 45; [1974] 1 LNS 175, FC (refd)

Yeong Ah Chee v Lee Chong Hai & Anor And Other Appeals [1994] 2 MLJ 614; [1994] 3 CLJ 20, SC (refd)

Legislation referred to

National Land Code s 214, 214(1)(a), (b), Form 5A

Appeal from: Civil Suit No 22–710 of 2007-5 (High Court, Johor Bahru)

Mohd Faizal Ahmad (Hazelin & Assoc) for the appellants.
KS Pang (KS Pang & Co) for the respondents.

Aziah Ali JCA (delivering judgment of the court):

[1] This is an appeal against the decision of the learned judge of the High Court at Johor Bahru which had dismissed the appellants' claim against the respondents for the transfer of ownership of a piece of land known as HS(D) 4405 PTD 17330 Mukim Mersing, District of Mersing, Johor ('PTD 17330') to the appellants. The respondents are the registered owners of PTD 17330. The appellants contend that they are the beneficial owners of PTD 17330 and that the respondents are bare trustees.

[2] We had allowed the appeal with costs of RM20,000 here and below and we had set aside the order of the High Court. We allowed the reliefs prayed for in paras 13(a), (b) and (c) of the statement of claim but we made no order on the claim for damages. We now give our reasons below. For convenience, we set

out the salient facts derived from the written submissions of learned counsel for the appellants.

SALIENT FACTS

[3] PTD 17330 was originally part of a piece of land held under CT No 2963 Lot 380 Mukim Mersing ('Lot 380'). By an agreement dated 14 November 1996 two persons by the name of Low Lin Aik ('LLA') and Tan Moi Hong ('TMH') purchased a portion of Lot 380 measuring 350ft x 109ft from five vendors. LLA and TMH each held half undivided share in the portion of Lot 380 that they had purchased.

[4] By a deed of assignment dated 30 September 1976 (exh P1) LLA sold all her half undivided share in the said portion of Lot 380 to the appellants in equal share at the price of RM16,000. The appellants had made full payment of the purchase price to LLA.

[5] By another deed of assignment dated 19 September 1976 (exh D7) both LLA and TMH assigned all their undivided share in Lot 380 to the respondents for a total consideration of RM15,000.

[6] According to the first appellant Tang Peng Huat ('PW1'), he was informed by Chong Kim ('the deceased'), who was one of the owners of a piece of Lot 380, that Lot 380 was in the process of being subdivided. The subdivision was handled by a legal firm by the name of Sykt Lim Han Boon.

[7] PW1 instructed a legal firm, Messrs T S Chong & Co to notify Sykt Lim Han Boon of the appellants' interests in Lot 380. From time to time, PW1 would meet up with Chong Kim and a surveyor, Tan Then Shoong('PW6'). However, the appellants' names and LLA were not included in the application for subdivision. It was then agreed between the appellants and the respondents that the portion purchased by the appellants would be registered in the names of the respondents and once the subdivision was completed, the respondents would transfer that portion to the appellants.

[8] The subdivision was approved on 19 June 1990. PW6 had issued a letter dated 18 May 2005 (exh P6) to all owners of Lot 380 requesting for payment of the survey fee, preparation and layout plan amounting to RM42,821.40. It is common ground that the portion of Lot 380 held by LLA and TMH was subdivided into two pieces of land known as HS(D) 4405 PTD 17330 ('PTD 17330') and HS(D) 4405 PTD 17331 ('PTD 17331'). The two subtitles were registered in the names of the respondents.

[9] In exh P6, PW6 stated that the aggregate amount due for PTD 17330 and PTD 17331 was RM2,974. PW1 paid to PW6 the sum of RM1,487, equivalent to 50% of the RM2,974, being the portion of fees payable in respect of PTD 17330.

[10] On 14 June 2005, the appellants and the respondents met with Chong Kim at his office. They were informed by Chong Kim that Form 5A had been issued by the land office. If payment was made, then the owners of Lot 380 would instruct the surveyor to draw up the boundaries. Later PW1 met the first respondent, Tan Boon Chong ('DW1') and collected the Form 5A for Lot 17330. PW1 paid to the land office the sum of RM2,729 for quit rent and premium, RM10 for the plan and RM110 for re-application and registration. PW1 gave copies of the receipts to DW1.

[11] Subsequently PW1 obtained from one of the owners of Lot 380 a copy of a letter dated 26 March 2007 from the land office which showed that Lot 380 had been subdivided and qualified titles had been issued. PW1 then went to see DW1 to ask when DW1 would transfer PTD 17330 to the appellants. DW1 informed PW1 that TMH's son, Ng Kim Hock intended to make claims over the land sold by his late mother to the respondents and also the portion sold to the appellants. PW1 paid the quit rent on Lot 17330 for the year 2009. However the respondents refused to transfer Lot 17330 to the appellants.

[12] Based on the above facts, the question before the High Court is whether the appellants have acquired any right or interest in PTD 17330 based on the deed of assignment dated 30 September 1976 entered into between them and LLA.

[13] The learned judge set out two issues for determination as follows:

(a) whether the deed of assignment dated 30 September 1976 (exh P1) by which LLA sold all his 1/2 undivided share to the appellants is null and void and unenforceable; and

(b) whether upon execution of exh P1, the appellants became the beneficial owners of the said 1/2 undivided share belonging to LLA.

[14] The learned judge decided the first issue by reference to s 214(1)(a) and (b) of the National Land Code (NLC) which states as follows:

> What may be transferred, and restrictions on exercise of powers
>
> 214(1) Subject to sub-section (2), the following shall be capable of transfer under this Act –
>
> (a) the whole, but not a part only, of any alienated land;
>
> (b) the whole, but not a part only, of any undivided share in alienated land;

(c) any lease of alienated land;

(d) any charge; and

(e) any tenancy exempt from registration.

[15] The learned judge is of the view that when LLA unilaterally decided to sell his half undivided share in the undivided portion of Lot 380, he was selling only a part of the undivided share. The learned judge found that the deed of assignment dated 30 September 1976 which purported to transfer LLA's half undivided share in the undivided share jointly owned by LLA and TMH in Lot 380 contravenes s 214(1)(a) and (b) of the NLC. The said deed is therefore null and void and ineffective in passing title in that portion of Lot 380 to the appellants.

[16] On the second issue, the learned judge found that payment of quit rent and the applicable charges and fees could not give title to the appellants in the face of the illegality of exh P1.

THE APPEAL

[17] Before us, learned counsel for the appellants Encik Mohd Faizal Ahmad informed us that the estate of LLA had applied to intervene in this suit but the application had been dismissed and no appeal has been filed.

[18] Learned counsel for the appellants submits that the learned judge has erred in her finding that LLA had assigned only part of her undivided share to the appellants. It is submitted that cl 1 of the deed of assignment dated 30 September 1976 (p 127 of the appeal record) shows that LLA had assigned not part but the whole of her undivided share to the appellants.

[19] Clause 1 of the deed of assignment states as follows:

> (1) In consideration of the sum of Dollars Sixteen Thousand ($16,000.00) paid by the Assignees to the Assignor upon signing of these presents (the receipt whereof the Assignor hereby acknowledges), the Assignor hereby assigns all his rights interests benefits and occupancy in the said property unto the Assignees absolutely.

Therefore it is submitted that the deed of assignment between LLA and the appellants has not contravened s 214 of the NLC and thus it is valid. Learned counsel further submits that upon payment of the full purchase price, the appellants became the beneficial owners of all the half undivided share of LLA in Lot 380 and the respondents are mere bare trustees.

[20] For the respondents, learned counsel Mr KS Pang submits that the deed of assignment is invalid for being in contravention of s 214 because LLA assigned only half of an undivided share and not the whole of the undivided share.

OUR DECISION

[21] The undisputed fact is that both LLA and TMH had bought a portion of Lot 380 measuring 350ft x 109ft with each owning half undivided share. There is no evidence produced to contradict the appellants' assertion that they had paid the full purchase price to LLA for the whole of her half undivided share.

[22] The deed of assignment identified the portion of land which LLA had assigned to the appellants. Clause 2 of the preamble to the deed of assignment dated 30 September 1976 states that it is marked in green in the plan annexed to the said deed.

[23] In cl 4 of the preamble to the deed it is stated as follows:

> 4. The Assignor has agreed to assign all his rights interests benefits and occupancy in the said property to the Assignees who have agreed to accept the same upon terms and conditions hereinafter contained.

[24] Further under cl 1 of the said deed, the assignor has assigned all her rights interests benefits and occupancy in the said property unto the assignees absolutely upon payment of $16,000 the receipt of which was acknowledged by the assignor.

[25] Learned counsel for the respondents contended that LLA had sold half of an undivided share. In our opinion this would be correct if it is viewed in reference to the whole undivided share purchased by LLA and TMH. However, with respect to the half undivided share which LLA herself owned, the deed of assignment shows that LLA has assigned the whole, and not part, of her undivided share. Therefore we find that the deed of assignment dated 30 September 1976 is valid as it has not contravened s 214 of the NLC.

[26] In *Yeong Ah Chee v Lee Chong Hai & Anor And Other Appeals* [1994] 2 MLJ 614; [1994] 3 CLJ 20 the Supreme Court said, inter alia, that 'It is an old and well-settled rule of equity that under a valid contract for sale of land, the beneficial ownership of the land passes to the purchaser who becomes the equitable owner, the vendor having a right to the purchase money for which he has a lien on the land When the full purchase price is paid, the vendor becomes a bare trustee ie unqualified trustee for the purchaser. It is also of salutary effect to remind ourselves of the fact that rules of equity apply to this country by the

Civil Law Act 1956 ...'. Thus upon acknowledgment of receipt of full payment by LLA and the surrender of all her rights interests benefits and occupancy of the whole of her undivided share in the portion of Lot 380 (which after subdivision is known as 'PTD 17330'), the appellants became beneficial owners of LLA's half undivided share and LLA became a bare trustee for the appellants (*Temenggong Securities Ltd & Anor v Registrar of Titles, Johore & Ors* [1974] 2 MLJ 45; [1974] 1 LNS 175).

[27] It is pertinent to note that, although the respondents are the registered owners of PTD 17330, they have conceded that this lot does not belong to them. Only lot PTD 17331 belongs to them. This is reflected in the testimony of the first respondent (DW1) who said in cross-examination as follows:

22. I put it to you that you are only entitled to one lot and not both pieces of land?

Answer: I agree.

23. I put it to you that you have chosen PTD 17331?

Answer: I agree.

59. I put it to you that since you only paid 1/2 portion that is RM15,000.00 for the half portion of the land under the Deed of Assignment, you should only be entitled to keep PTD 17331?

Answer: I agree.

63. I put it to you that by your own conduct you have acknowledged that the other piece of land does not belong to you?

Answer: I know, my Lady.

[28] The second respondent ('DW2') states in his examination-in-chief that PTD 17330 belongs to LLA and he had bought only PTD 17331. The second respondent agrees that PTD 17330 does not belong to the respondents. In re-examination the second respondent states that he leaves it to the court to decide to whom the land should be given.

[29] Having considered the evidence and coupled with the respondents' own concession that PTD 17330 does not belong to them, we allowed the appeal and granted the reliefs prayed for by the appellants as stated earlier in this judgment.

Appeal allowed with costs of RM20,000.

Reported by Ashok Kumar